

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC**

In the Matter of:)	
)	
Request for Review/Appeal and)	
Request for Waiver)	
Of the Decision of the)	
Universal Service Administrator by)	
)	
McKeesport Area School District)	CC Docket No. 02-6
BEN Number: 125222)	
)	
Schools and Libraries Universal Service)	
Support Mechanism)	
)	
Wireline Competition Bureau)	

REQUEST FOR REVIEW/APPEAL AND REQUEST FOR WAIVER

Marlene H. Dortch
Federal Communications Commission
Office of the Secretary
445 12th Street, SW
Washington, DC 20554

This is an appeal of a decision by the USAC Administrator and waiver request of the Schools and Libraries Division rule regarding an invoice deadline extension request.

USAC Administrator's Decisions on Appeal:

Date of Letter:	June 19, 2013
Funding Year 2009:	July 1, 2009 – June 30, 2010
Applicant Name:	McKeesport Area School District
Billed Entity Number:	125222

SLD Contact Information:

Rosemary Enos
McKeesport Area School District
31100 Solon Road
P.O. Box 39490
Solon, OH 44139
Phone: (216) 514-3336
Fax: (216) 514-3337

Funding Request Numbers Appealed:

Form 471 Application Number: 602465
Funding Request Number(s): 1661779

USAC's Reason for Denial:

“...Current guidelines and procedures require Invoice Deadline Extension requests to be filed by the end of the relevant invoice receipt period for the service category of the FRN requiring an extension. The invoice receipt deadline is 120 days after the end of the service delivery date or 120 days after the date of the From 486 Notification Letter, whichever is later. USAC denied your request for Invoice Deadline Extension because the request was not filed in a timely manner...”

Issue:

The invoice extension request for McKeesport Area School District was not filed on time because of special circumstances regarding the district personnel responsible for filing. During this period, the Technology Director at the District was found to have been habitually using District computers to view inappropriate content. Upon this discovery, the Director abruptly left the position without making any arrangements for E-Rate work to continue.

A number of months passed and no one was named to the position due to the administrator being suspended during an investigation led by the state Attorney General's office.

After a number of months and a federal investigation that turned up additional facts, the Technology Director was charged with a number of felonies, ultimately resulting in resignation from the District. Needless to say, because many months passed with uncertainty about the position and the responsibilities of the Technology Director at the District, the deadline was missed.

Facts:

McKeesport Area School District was unable to file for an invoice extension because of unforeseen employee turnover. The former Technology Director left unexpectedly and there was a period where no one was responsible for E-Rate paperwork. The result was the absence of someone to continue the handling the district's responsibilities for E-Rate. As a result, filing deadlines were not met as timely as they should have been according to FCC guidelines.

Argument:

This is an Appeal and Waiver request. The applicant was late in filing an invoice extension request because of circumstances that caused dates to be missed.

FCC precedent bolsters the correctness of Applicant's position. Consider the following FCC precedent: In reviewing the decision in *Canon McMillan*, the FCC states that non-payment of invoices was not warranted given the applicants missed a USAC procedural deadline and did not violate a Commission rule.¹ In this ruling, the point the FCC makes is that honest clerical or administrative errors must not prohibit getting funds to applicants in accordance with the Congressional mandate set forth in the Telecommunications Act of 1996.

In *Bishop Perry Middle School, 06-54*, the FCC granted 196 appeals of decisions by the Universal Service Administrative Company (USAC) concerning the schools and libraries universal service support mechanism for denying funding due to certain clerical or ministerial errors in the application, *e.g.*, a failure to timely file an FCC Form 471, a failure to timely file a certification related to an FCC Form 470.

In *Alton Community Unit School District 11*, the FCC granted 49 appeals of decisions by the Universal Service Administrative Company (USAC) concerning the schools and libraries universal service support mechanism for denying funding due to invoice forms being late or not received by USAC. The FCC further states that "*these applicants claim that staff changes or inadvertent errors on the part of their staff resulted in late filing or failure to file*"

¹ Request for Review of the Decision of the Universal Service Administrator by Canon-McMillan School District, *et al.*, Schools and Libraries Universal Service Support Mechanism, File Nos. SLD-360219, *et al.*, CC Docket No. 02- 6, 23 FCC Rcd 15555 (Wireline Comp. Bur. 2008) (*Canon-McMillan Order*) (finding good cause to waive USAC's deadline for FCC Forms 472 or 474).

While the FCC has affirmed USAC's authority to put in place administrative policies to ensure prompt review of applications and prevent the undue delay of the application process, FCC precedent has shown that in cases where there is no evidence of waste of program funds, that eligible schools and libraries should not be denied funding because of staff changes or inadvertent errors.

In the *Bishop Perry Order*², the Commission found that, under certain circumstances, rigid adherence to certain E-Rate rules and requirements that are "procedural" in nature does not promote the goals of section 254 of the Act – ensuring access to discounted telecommunications and information services to schools and libraries – and therefore does not serve the public interest. Additionally, McKeesport Area School District is at the end of the process and has already received service and complied with all other E-Rate program rules to date.

The USAC's seminal authority is to guard against waste, fraud and abuse. Waste, fraud and abuse is not present here, only clerical/administrative errors. Because of unexpected staff absence and turnover an invoice extension request was missed.

Conclusion:

We respectfully request that the 120 day limit for filing the invoice extension be waived and that the extension request for FRN 1661779 be granted.

Respectfully Submitted by:

/s/ Rosemary Enos

Rosemary Enos
on behalf of McKeesport Area School District
Epic Communications
31100 Solon Road
P.O. Box 39490
Solon, OH 44139
Phone: (216) 514-3336
Fax: (216) 514-3337
rpenos@epicinc.org

² Request for Review of the Decision of the Universal Service Administrator by Bishop Perry Middle School, Schools and Libraries Universal Service Support Mechanism, CC Docket 02-6, Order, 21 FCC Rcd 5316, 5316-17, 5319-20, 5323, paras. 2, 9, 14 (2006) (*Bishop Perry Order*).